



California Fair Political Practices Commission

May 15, 1987

Susan D. Yoza, Assistant Counsel
Hawaii State Ethics Commission
P.O. Box 616
Honolulu, Hawaii 96809

Re: Your Request for Advice
Our File No. I-87-113

Dear Ms. Yoza:

We have been asked to respond to your request for information regarding this agency's practices with respect to the confidentiality of advisory opinions issued by our agency. You have asked a series of specific questions of our agency and other similar state agencies.

Initially, it is important to understand that our agency does not provide advice regarding past conduct. The Enforcement Division of the Fair Political Practices Commission is empowered to bring actions to enforce the Political Reform Act (the "Act")^{1/} with respect to past violations.^{2/} Your letter indicates that your agency's advisory opinions involve "...whether the facts and circumstances of a particular case constitute a violation of the State Ethics Code." This agency's advisory opinions deal with prospective circumstances and are intended to assist the requestor in complying with the provisions of the Act in the future.

We turn now to your specific questions:

1. Does the Commission publish or otherwise make public its decisions or opinions?

Yes. (See Section 83114(a), copy enclosed.)

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} These enforcement proceedings obviously involve factual determinations which require certain due process safeguards. Confidentiality is provided at certain stages.

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1a. If so, in what form? Is any information deleted from published decisions?

Formal Commission opinions are published through the California Continuing Education of the Bar. No information is deleted. Written staff advice is summarized in our monthly Bulletin (sample enclosed), and the letters are generally public. (See Regulation 18329(b)(6), copy enclosed.) Again, information is not deleted from letters made public.

1b. Does the Commission follow any guidelines or rules in publishing or making public its decisions?

See Section 83114(a) and Regulation 18329(b)(6), supra.

2. Does the Commission disclose the identity (e.g., name, title, department or office) of the person(s) involved in decisions or opinions?

Yes. Enclosed are samples of an opinion and "formal written advice."

3. Should the identity of persons involved in decisions or opinions be confidential information? What are the advantages or disadvantages of such confidentiality?

Our views on confidentiality of identity are controlled by our statutes and regulations, discussed above.

4. Does the Commission keep confidential any information relating to decisions or opinions?

Yes. See Regulation 18329(b)(6), supra.

5. Has any person ever challenged or objected to the disclosure of his or her identity by the Commission?

Yes.

5a. On what ground(s) was the challenge based?

Through his attorney, a sitting judge asked a question which arose as a result of proceedings against him by the California Commission on Judicial Performance. Since those proceedings are required by the California Constitution to remain confidential, the judge argued that he should not be required to reveal his identity in order to obtain our advice under the Political Reform Act.

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5b. What was the outcome of that challenge?

Ultimately, the judge changed his mind and agreed to reveal his identity. However, since we concluded that the judge would not be required to report under the circumstances posed, the advice remained confidential pursuant to Regulation 18329(b)(6).

6. Does any legal cause of action derive from the disclosure of a person's identity in connection with a decision or opinion made by an ethics commission (e.g., invasion of privacy, defamation, etc.)?

There is the potential, depending on the circumstances.

7. In several cases that have recently come before your Commission, you have received inquiries from members of the public as to whether or not a particular state employee was required to disqualify himself from taking official action in a certain matter. Your ethics laws do not authorize your Commission to issue advisory opinions to the general public concerning state employees. Therefore, you were unable to respond directly to their requests for advice. Further, although your Commission did in fact render advisory opinions directly to the state employees involved in those matters, your confidentiality laws prohibited your Commission from releasing copies of those advisory opinions to interested third parties.

7a. How would the Commission have responded in this situation?

Our advice in such circumstances is public. We would have furnished copies of the advice to the inquiring members of the public.

7b. Does the Commission issue advisory opinions to members of the public about particular state employees?

We provide advice only to the affected individuals. However, once provided to the affected individuals, we would then provide copies to others on request.

7c. Does the Commission issue advisory opinions about particular state employees to other state agencies or officials (e.g., to a state auditor or to a legislator)?

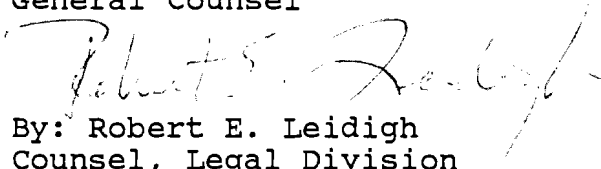
No. See answer to b, above. See also Regulation 18329(b)(8)(B).

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I trust that the foregoing answers and the enclosed materials have satisfactorily responded to your request. Should you have further questions, I may be reached at (916) 322-5901.

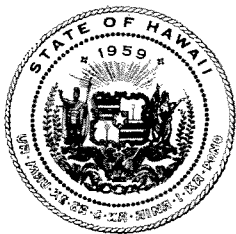
Sincerely,

Diane M. Griffiths
General Counsel



By: Robert E. Leidigh
Counsel, Legal Division

REL:km
Enclosures



STATE ETHICS COMMISSION

1001 BISHOP ST., PACIFIC TOWER 970 • P.O. BOX 616 • HONOLULU, HAWAII 96809 • TELEPHONE 548-6401

April 8, 1987

APR 13 8 51 AM '87

Mr. John Keplinger
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Mr. Keplinger:

I am the Assistant Counsel for the Hawaii State Ethics Commission and am seeking your assistance in connection with our Commission's review of our confidentiality laws.

During the December, 1986, COGEL conference in Hartford, Connecticut, it was brought to our attention that Hawaii is one of a minority of states that issues formal advisory opinions on a confidential basis. We are currently in the process of reviewing this practice, together with our confidentiality laws, to determine whether it would better serve our Commission's purpose to issue advisory opinions that are more accessible to public review.

The Hawaii State Ethics Commission is authorized by section 84-31, Hawaii Revised Statutes, to render advisory opinions upon the request of any state legislator or employee as to whether the facts and circumstances of a particular case constitute a violation of the State Ethics Code. Under our Ethics Code, these advisory opinions are confidential and cannot be released to anyone other than the person to whom the opinion was issued unless that person consents, in writing, to the release of the opinion by the Commission. Our Commission is authorized to publish summaries of its advisory opinions, but is required to make sufficient deletions in the summaries to prevent disclosing the identities of the persons involved.

We are very interested in learning about the confidentiality practices of ethics commissions in other states so that we can review our own practices on a comparative basis. Accordingly, we would appreciate your response to the following questions:

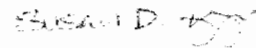
1. Does your Commission publish or otherwise make public its decisions or opinions?
 - a. If so, in what form? Is any information deleted from your published decisions?
 - b. Does your Commission follow any guidelines or rules in publishing or making public its decisions?

2. Does your Commission disclose the identity (e.g., name, title, department or office) of the person(s) involved in your decisions or opinions?
3. Do you believe that the identity of persons involved in your decisions or opinions should be confidential information? What do you see as the advantages or disadvantages of such confidentiality?
4. Does your Commission keep confidential any information relating to your decisions or opinions?
5. Has any person ever challenged or objected to the disclosure of his/her identity by your Commission?
 - a. On what ground(s) was the challenge based?
 - b. What was the outcome of that challenge?
6. Do you believe any legal cause of action could derive from the disclosure of a person's identity in connection with a decision or opinion made by an ethics commission, e.g., invasion of privacy, defamation, etc.?
7. In several cases that have recently come before our Commission, we have received inquiries from members of the public as to whether or not a particular state employee was required to disqualify himself from taking official action in a certain matter. Our ethics laws do not authorize our Commission to issue advisory opinions concerning state employees to the general public. Therefore, although we recognized that the inquiring members of the public had a legitimate interest in the matter, we were unable to respond directly to their requests for advice. Further, although our Commission did in fact render advisory opinions directly to the state employees involved in those matters, our confidentiality laws prohibited our Commission from releasing copies of those advisory opinions to interested third parties.
 - a. How would your Commission have responded in this situation?
 - b. Does your Commission issue advisory opinions about particular state employees to members of the public?
 - c. Does your Commission issue advisory opinions about particular state employees to other state agencies or officials, (e.g. to a state auditor or to a legislator)?

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Thank you very much for your assistance and your attention to this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Susan D. Yoza", with a stylized flourish at the end.

Susan D. Yoza
Assistant Counsel

SDY/sr



California Fair Political Practices Commission

April 14, 1987

Susan D. Yoza
State Ethics Commission
P.O. Box 616
Honolulu, HI 96809

Re: 87-113

Dear Ms. Yoza:

Your letter requesting advice under the Political Reform Act was received on April 13, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh

APR 10 1987



MEMBERS OF THE CITY COUNCIL
ANTHONY L. BLAND
LAWRENCE F. BUCHHEIM
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CITY MANAGER
STEPHEN B. JULIAN

April 6, 1987

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Re: Conflict of Interest Question/San Juan Capistrano
City Council member Phillip R. Schwartz

Dear Ms. Griffiths:

This letter is to request an informal opinion regarding whether City of San Juan Capistrano Councilman Phillip Schwartz would have a conflict of interest in participating in any planning and zoning decision affecting a project in which his planning firm had prepared an Environmental Impact Report for the particular project.

FACTS

Councilman Phillip Schwartz is a partner in the planning firm known as PBR based in Costa Mesa. Councilman Schwartz has a five percent interest in the firm. Councilman Schwartz heads up the division of the firm that prepares Environmental Impact Reports for its clients which include public and private parties. He customarily assumes general responsibility for the final EIR product and will frequently sign the Environmental Impact Report as to its completion in accordance with the California Environmental Quality Act.

There is presently pending, within the City of San Juan Capistrano, a major project proposal to revitalize the downtown area. The City of San Juan Capistrano and the Redevelopment Agency of the City of San Juan Capistrano are presently engaging a redeveloper to redevelop the downtown portion of the City. Councilman Schwartz sits on both the City Council and the Redevelopment Agency. Once the details of a project are developed, significant zoning and planning decisions will have to be made by the City Council which will also include the certification of the Environmental Impact Report as in compliance with the California Environmental Quality Act. In addition, the City Council is legally required to make findings as to the mitigation of adverse environmental effects identified in the Environmental Impact Report. These EIR actions

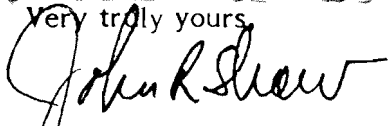
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are taken concurrently as the planning and zoning decisions are rendered.

Councilman Schwartz has raised the question as to whether he would be disqualified from voting on the certification and findings procedures regarding the Environmental Impact Report if his firm, PBR, prepares the Environmental Impact Report to be utilized in assessing whether to grant general plan and zoning approvals required for this downtown project. Councilman Schwartz requests that your office render an informal opinion as to whether a conflict of interest could arise under Government Code Sec. 87100 and 87103(a) - Business Entity, or 87103(c) - Source of Income.

Your cooperation is most appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John R. Shaw".

John R. Shaw
City Attorney

JRS/ef

cc: Councilman Phillip R. Schwartz